BENSON AND SUNDARA AYYAR JJ.

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is entitled to the profits of his office during the time that he was under suspension without notice. This proposition is, in our opinion, quite untenable as the suspension was found to be proper at the subsequent enquiry. The correct rule in such cases is, we think, that laid down at page 1406 of vol. 29, American Cyclopædia, and in Dillon on Municipal Corporations, section 247, although if the order is set aside as improper he might be entitled to recover the profits, In the result we reverse the decision of the lower Appellate Court and restore that of the District Munsif with costs both here and in the lower Appellate Court.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

1911. April 20.

GOPALASAMIAYYAR (PLAINTIFF), APPELLANT

v.

SUBRAMANIA SASTRI (DEFENDANT), RESPONDENT.*

Limitation Act (IX of 1908), sched. I, art, 49—Limitation begins to run upon refusal to return property detained.

Where a person to whom moveable property is entrusted to be returned on the fulfilment of certain conditions, retains such property after such conditions are fulfilled, he will be deemed to be in possession on behalf of the person entitled, until he refuses delivery : mere silence on demand being made will not constitute such refusal. The period of limitation for a suit to recover the property thus detained will, under article 49 of schedule II of the Limitation Act run from the date when the defendant refuses to deliver such property.

SECOND APPEAL against the decree of T. Swami Ayyar, the Subordinate Judge of Kumbakonam, in Appeal Suit No. 471 of 1909, presented against the decree of C. S. Venkataramana Row, District Munsif of Mannargudi, in Original Suit No. 40 of 1908.

S. Krishnamurti Ayyar for appellant.

S. Srinivasa Ayyar for respondent.

The facts are thus stated in the judgment of the Court of First Instance.

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* Second Appeal No. 190 of 1910

"Suit to recover from the defendant Rs. 425 with Rs. 135 for interest thereon as detailed below. The plaintiff was dealing in jewels till 1905. In January 1904 he, being in need of money, applied to the defendant for a loan. The defendant stated that if some jewels were given him, he would raise money on their pledge, whereupon plaintiff handed to him a diamond nose-screw worth Rs. 175 and a cut ruby thodu worth Rs. 250, and defendant then paid him Rs. 110 alleging that he raised the money on their pledge. In July 1904, one Gopala Sastri informed plaintiff that there was demand for the nose-screw, whereupon plaintiff paid Gopala Sastri Rs. 117, being the principal and interest due on the loan asking him to hand over the same to the defendant and to receive from him the nose-screw alone. Thus the debt was repaid. Defendant then informed plaintiff that Gopala Sastri took away both the jewels representing to him that plaintiff wanted him to deliver both of them, and he (defendant) promised to get back the jewels. At the end of July 1904, defendant gave a notice to Gopala Sastri and in reply, the latter denied having received any jewel. After this, defendant on being pressed by plaintiff, promised to make good their value to him if a slight remission be made, but eventually defendant sent him a notice in April 1906 alleging that nothing was due. Plaintiff has reason to believe that the jewels have been misappropriated by the defendant. He is therefore bound to make good their value with interest. The cause of action is stated to have arisen in April 1906 when defendant refused to return the jewels."

The defendant raised the plea of limitation which was overruled and decree given for plaintiff. On appeal the Subordinate Judge held the suit barred. The material portion of his judgment is as follows :—

"On hearing the arguments advanced before me on the question of limitation, I am convinced that the objection must prevail. The suit is not governed by article 145, as held by the District Munsif, for the reasons explained at pages 55 and 56 of *Ramakrishna Reddy* v. *Panaya Goundan* (1). It is governed by article 49. The authority which is followed in that case is the decision in *Subbakka* v. *Maruppakkala* (2) which applies on all fours to the present case. There the deposit of the

(1) (1899) 9 M. L. J., 51. (2) (1892) I. L. R., 15 Mad., 157.

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title-deeds rendered its detention lawful in its origin, but after the debt to secure which they had been deposited was discharged, and the depositor made a demand and the title-deeds were not returned, their further detention was considered unlawful. It is not necessary that there should be an express refusal in such a case to determine the date when the cause of action begins. The ruling under reference distinctly lays down that the date of demand is the period from which it should be calculated. Article 49 states that in a suit to recover specific moveable property under wrongful detention the cause of action arises from the date when the detention becomes wrongful [see *Ramaswamy Ayyar* v. *Muthusamy Ayyar* (1)]. When the detention becomes wrongful in a case like this has been explained in the *Subbakka* v. *Maruppakkala* (2) case above cited in the terms already referred to. In this case the first demand was made in August 1904 as per Exhibit B, and the defendant did not return the jewels. His detention became wrongful from that time and plaintiff's cause of action also arose then. Calculated from that period the suit is clearly barred by limitation."

Plaintiff appealed.

JUDGMENT.—The plaintiff handed over the jewel to the defendant to procure a loan for the plaintiff. The defendant obtained the loan after the plaintiff had paid it off. The defendant who had got back the jewel retained possession of it. The plaintiff made a demand on defendant for the return of it by Exhibit B on 18th August, 1904. The defendant's refusal to return was on 29th April 1906 (Exhibit III) and the suit was instituted on 18th February, 1908, *i.e.*, within three years after the defendant's refusal. The plaint does not allege that there was an agreement that the jewel should remain in deposit with the defendant after the repayment of the loan. Article 145 of the Indian Limitation Act, 1908, would therefore apparently be inapplicable. But the defendant must be taken to have held possession of the jewel on behalf of the plaintiff until the date of Exhibit III. We are therefore of opinion that under article 49 of the Indian Limitation Act, 1908, the suit is not barred by limitation. We are unable to agree with Mr. Srinivasa Ayyar's contention that mere silence on defendant's part

(1) (1907) I. L. R., 30 Mad., 12. (2) (1892) I. L. R., 15 Mad., 157.

when he received exhibit B would on this account amount to refusal (see *Gopal Chandra Bose* v. *Surendra Nath Dutt* (1)). We reverse the decree of the lower Appellate Court and restore that of the Munsif with costs both here and in the lower Appellate Court.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

1911. April 21.

S. M. S. SUBRAMANIAN CHETTY (PLAINTIFF), APPELLANT,

v.

V. K. A. MUTHIA CHETTY (DEFENDANT), RESPONDENT.*

Contract to assign document, breach of—Damages awardable though no loss is proved—Measure of damages.

A, as the agent of *B*, took from *D*, a debtor of *B*, for the debt due, a promissory-note in favour of *C*. *A* undertook to get the note endorsed in favour of *B* by *C*. *A* having failed to do so for more than a year, *B* sued *A* claiming as damages the amount of the note with interest. At the settlement of issues *A* produced the promissory-note endorsed in favour of *B*.

Held, that *B's* suit was maintainable and that the endorsement after the suit was filed could not defeat *B's* claim. The contract to obtain the assignment not having been performed within a reasonable time the contract was broken and the right to sue accrued before the suit was brought. It could not be said that *B* had sustained no damage which he was entitled to recover as the note standing in the name of a third party prevented him from suing on the original obligation.

A promissory-note in consideration of a pre-existing debt is only a conditional payment; and if the note remains in the hands of the original payee when it is dishonoured, the original debt revives. If however the note had been endorsed to a third party a suit on the original debt would not be maintainable.

A debtor, In re, [(1908) L. R., 1 K.B., 344], referred to.

It is not necessary that *B* should prove that *D* had become insolvent or that the money could not be recovered if a suit had been brought against *D*.

The amount recoverable will be the amount for which the promissory-note was executed.

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(1) (1903) 12 C. W. N., 1010 at p. 1014.

*Second Appeal No. 1137 of 1909.